

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 500 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT ENGINEERING & GENERAL KAMDAR UNION

Versus

SWASTIK ENGINEERING MFG.CO.

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Appearance:

MR RK MISHRA for Petitioner

MR DF AMIN for Respondent No. 1

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/09/2000

ORAL JUDGEMENT

#. Heard learned Advocate Mr.R.K.Mishra for the petitioner and learned Advocate Mr.D.F.Amin for the respondent. The petitioner has challenged the judgment and order dated 27.07.1990 passed in Complaint (IT) No.19

of 1988 (copy at Annexure 'A') passed by the Industrial Tribunal, whereby the complaint made by the petitioner under section 33-A of the Industrial Disputes Act, 1947 ('Act' for short) is rejected.

#. The petitioner approached the Industrial Tribunal under section 33-A of the Act with a complaint that pending the proceedings of Reference (IT) No.597 of 1984 between the petitioner and the respondent in the Industrial Tribunal, the respondent company has closed down the unit without obtaining necessary approval or permission under the Act. That the said act and action on the part of the respondent regarding closure of the unit amount to changing the service condition of the workmen who are the members of the petitioner union. It is also contended that the respondent company had closed the said unit on 31.03.1988 without making payment of salary to the workmen for the work done upto the period of March,1988. Under such circumstances, the closure of the unit by the respondent company being illegal, the workmen who are the members of the petitioner union are entitled to be reinstated in service and are also entitled to permissible benefits under the law.

It appears from the record that the Industrial Tribunal to whom the said complaint (IT) No.19 of 1988 was referred to for final disposal, issued notice to the present respondent. That, the respondent appeared before the Tribunal and filed reply and also produced documentary evidence. The parties were heard and thereafter the impugned order is passed.

#. The perusal of the award Annexure "A" clearly suggests that the Tribunal has examined the documentary evidence produced before him and has rightly come to the conclusion that necessary permission before closing the unit was obtained by the respondent company and the workmen were paid legitimate dues with requisite compensation on or before 31.03.1988. The Tribunal has also given a finding that the workmen who raised the dispute which was alleged to be pending under the complaint as Reference (IT) No.597 of 1984 was withdrawn by the workmen and as such no cause for the complainant to make complaint under section 33-A of the Act had arisen or survived. On that finding and referring to the facts as well as relevant law, the Tribunal has concluded that despite the said fact, if the workmen are not satisfied and are aggrieved on account of alleged illegal closure of the unit by the respondent company, they should make a fresh reference under section 10(1) of I.D.Act and on the basis of the said reasoning the

Tribunal has rejected the complaint.

#. The learned Counsel for the petitioner Mr.R.K.Mishra contended that the closure of the unit amounts to effecting change in the service conditions of the workmen. Not only that the closure of the unit without following the prescribed procedure under sections 25-F, 25-FF and 25FFA etc.,also amount to breach of provisions contained in sections 33(1) and 33(2)(b). It was urged by Mr.Mishra that on account of such situation the workmen (petitioner) made a complaint before the Industrial Tribunal that the respondent had closed the unit without obtaining necessary permission of the Tribunal before whom Reference (IT) No. 597 of 1984 was pending. That, the Tribunal ought to have decided the said complaint along with Reference (IT) No.597 of 1984, instead of that the Tribunal has concluded that the complainant should have raised an independent reference under section 10(1) which is an error of law and thereby the petition should be allowed.

#. On appreciation of facts as apparent from the impugned award Annexure 'A', it prima facie appears that on the date when the complaint was made or decided by the Tribunal, Reference (IT) No.597 of 1094 was not pending before the Tribunal as it was already withdrawn by the workmen at whose instance it was made. On a specific query to learned Advocate for the petitioner to point out from the material produced on record that said Reference (IT) No. 597 of 1984 was pending before the Industrial Tribunal when such a Complaint (IT) No.19 of 1988 was made and heard by the Industrial Tribunal, the learned Advocate for the petitioner could not point out any fact. Not only that, he could not dispute the fact stated in the impugned award that such a reference was already withdrawn. Under such circumstances, it cannot be said that the Tribunal has erred much less had committed jurisdictional error while deciding the said complaint.

#. In view of the said finding the petition cannot be said to be maintainable at law. As a result, the petition fails and stands disposed of as rejected. Rule is discharged with no order as to costs.

Sd/-

(A.K.Trivedi, J)

m.m.bhatt